IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 245 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARVINDBHAI KHODIDAS MAKWANA - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR MHM SHAIKH for Applicant(s) : 1,
MR.HL JANI APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 03/05/2007

ORAL JUDGMENT

1. After conviction and sentence and confirmation thereof in appeal for the offence punishable under Section 66(1) of the Bombay

Prohibition Act, 1949, the petitioner has pressed the present revision application only for modification of the sentence in view of the peculiar facts and circumstances of the petitioner and the subsequent amendment of law by the Bombay Prohibition (Gujarat Amendment) Act, 2003 and the Bombay Prohibition (Gujarat Amendment) Act, 2005, both of which have come into force on 17.02.2006. It was submitted on behalf of the petitioner, who was personally present in the Court, that, as the record revealed, it was the first offence of consumption of liquor registered against the petitioner. He was only 26 years at the time of the offence and he was hailing from very poor strata of society. It was further submitted that the petitioner was shouldering the responsibility of his family of six persons with no other source of income and he had already paid the amount of fine of Rs.500/- which was imposed upon him by the trial court. It was also submitted that the petitioner was prepared to render some community service, if so

ordered, but he was hardly left with any energy or time for that purpose after the manual labour undertaken by him on daily-wage basis for keeping together the soul and body of his family members.

2. Learned A.P.P. Mr.H.L. Jani submitted that the recent amendments mentioned earlier so as to remove minimum term of imprisonment may not strictly be applicable since the offence, conviction and its confirmation preceded the date of coming into force of the said amendments which were not given retrospective effect by any express provision. He, however, fairly conceded that the Courts below did not appear to have been apprised of the grim situation faced by the petitioner so as to consider whether special and adequate reasons existed to make an exception and departure from the rule of imposing minimum punishment.

3. In the above facts and circumstance, it

clearly appears from the record that, despite existence of adequate reasons for not imposing the minimum sentence, they were not duly canvassed before the trial court and, upon being asked, the petitioner had only submitted that the Court may make appropriate order of punishment. The subsequent amendment of law, whether applicable in the facts of the case or not, does indicate the changing perception of the legislature and society and the legislature has, in its wisdom, repealed the provision of minimum punishment for adopting better methods of dealing with the offences under the Prohibition Act. Having regard to these developments and the factual predicament of the petitioner wherein his imprisonment would amount to ordering starvation of his family, it is indeed a fit case for intervention and exercise of the discretion vested in the Court, prior to the amendments, by the proviso to Clause (i) of Sub-section (1) of Section 66 of the Bombay Prohibition Act, 1949. Therefore, the impugned order of the trial court

dated 07.11.1998 in Criminal Case No.2082 of 1996 and the order dated 22.03.1999 confirming the former order in Criminal Appeal No.142 of 1998 are modified to the extent that the sentence of imprisonment for three months shall stand deleted. Rule is made absolute with no order as to costs. Bail bonds furnished by the petitioner shall stand cancelled.

(D.H.WAGHELA, J.)

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